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**STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 16-O-16898
)	(17-O-03661)-YDR
MARLON MAGDADARO ALO,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 143338.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

In this matter, respondent Marlon Magdadaro Alo (Respondent) was charged with five counts of misconduct stemming from two correlated matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 90 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.



¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 11, 1989, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 20, 2017, the OCTC properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the OCTC by the U.S. Postal Service as undeliverable.

In addition, reasonable diligence was used to notify Respondent of this proceeding. The OCTC made several attempts to contact Respondent without success. These efforts included calling Respondent at his membership records telephone number, conducting a LexisNexis search for additional contact information, mailing a letter to Respondent at his membership records address and at a possible alternative address identified in the LexisNexis search, and emailing a copy of that letter to Respondent at his membership records email address.

Respondent did not appear at the initial status conference and failed to file a response to the NDC. On January 22, 2018, the OCTC filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by an OCTC paralegal³ declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.

³ Rule 5.80(B) states that a default motion "must be supported by a declaration establishing that the deputy trial counsel acted with reasonable diligence to notify the member of the proceedings." While a declaration from the deputy trial counsel is typical and preferred, rule 5.80(B)(2) indicates that the reasonable diligence steps may be performed by an agent of the deputy trial counsel.

Respondent did not file a response to the motion, and his default was entered on February 9, 2018. The order entering default was served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not subsequently seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On June 1, 2018, the OCTC filed the petition for disbarment. The OCTC reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 28, 2018.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on September 19, 2013, in case No. S211906 (State Bar Court case Nos. 11-C-15385; 11-C-19364; 12-C-12888), Respondent was suspended from the practice of law for two years, execution of that period of suspension was stayed and he was placed on probation for three years, including a six-month period of actual suspension. This matter involved Respondent's criminal misdemeanor convictions for making harassing telephone calls (five counts) and disobeying a court order. Respondent stipulated that his criminal misconduct did not involve moral turpitude but did involve other misconduct warranting discipline.

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The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for Respondent's own purposes \$41,519.05 in entrusted client funds.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust) by failing to maintain client funds in a trust account.

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to multiple reasonable client status inquiries.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the OCTC.

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Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to: (1) timely execute confidentiality waivers; (2) undergo an evaluation and timely provide a psychiatrist report to the

Office of Probation; (3) provide satisfactory proof of Alcoholics Anonymous meeting attendance; (4) submit multiple quarterly reports; (5) report compliance with criminal probation conditions; (6) report compliance with psychiatrist treatment conditions; (7) submit multiple psychiatrist compliance declarations; (8) notify the Office of Probation of a change in his treatment provider; and (9) timely submit proof of attendance at a session of Ethics School and passage of the test given at the end of that session.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Marlon Magdadaro Alo, State Bar Number 143338, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to Mario Cordero in the amount of \$41,519.05 plus 10 percent interest per year from December 2, 2011. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 17, 2018


YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 18, 2018, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARLON M. ALO
13520 EL DORADO DR APT 50E
SEAL BEACH, CA 90740

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Kimberly G. Kasreliovich, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 18, 2018.



Angela Carpenter
Court Specialist
State Bar Court